

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.9.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.741 of 2007

R.Vasudevan

.. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Collector and
District Magistrate
Tiruvannamalai District
Tiruvannamalai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.P.K.Srilokesh

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against Bommi, wife of (Late) Rayar, as the said authority arrived at the subjective satisfaction that the said detinue is a Bootlegger and she has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. The order of detention came to be passed by the second respondent on the basis of the ground case, complaint of which was given by one Annamalai to the Sub Inspector of Police, Prohibition Enforcement Wing, Tiruvannamalai stating that the detainee was selling I.D. arrack, and when the complainant consumed the same he had experienced burning sensation in his stomach, giddiness, vomitted twice and chest pain. A case was registered in Crime No.227 of 2007 on the file of the Tiruvannamamali Prohibition Enforcement Wing Police Station for the offences punishable under Sections 4(1)(i) and 4(1-A)(ii) of the Tamil Nadu Prohibition Act, the detainee was apprehended, arrack was recovered in the presence of witnesses. On chemical analysis, the Doctor opined that the arrack is mixed with 6.4 mg. of atrophine per 100 ml. arrack and the same is harmful and injurious to human body. The order of detention is also supported with five adverse cases against the detainee for the offences of alike nature.

3. Challenging the said detention, the son of the detainee has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to direct the respondents to produce the detainee - Bommi before this Court, now confined in Women's Special Prison, Vellore, to call for the records of the respondents relating to the order of detention vide proceedings No.D.O.No.26/2007-C2, dated 7.5.2007, to set aside the same and to set her at liberty.

4. We have perused the materials available on record and heard the submissions of Mr.P.K.Sri Lokesh, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. From a perusal of the records it is clear that even though in the grounds of detention it is stated that the petitioner was produced before the learned Judicial Magistrate, Polur on 21.3.2007 and she was remanded for 15 days till 4.4.2007 and lodged in the Central Prison for Women, Vellore and subsequently, her remand has been extended up to 16.5.2007 by the learned Judicial Magistrate, Polur, in the remand order dated 2.5.2007, the learned Judicial Magistrate, Polur had stated "எதிரி ஆஜர்படுத்தப்படவில்லை. அடுத்த வாய்தா நாள் 16/05/2007", which means the accused was not produced and the matter is adjourned to 16.5.2007. Therefore, in our considered view the subjective satisfaction arrived at by the Detaining Authority is vitiated as a result of non application of mind on the part of the Detaining Authority to the above fact. On this ground the Detention Order is liable to be set aside.

The habeas corpus petition is accordingly allowed and the order of detention passed by the second respondent in proceedings dated 7.5.2007 against the detainee is quashed and the detainee is directed to be set at liberty forthwith from custody unless she is required in connection with any other case.

sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The District Collector and District Magistrate Tiruvannamalai District Tiruvannamalai.
2. The Secretary to Government Prohibition and Excise Department Fort St.George, Chennai - 9.
3. The Public Prosecutor High Court, Madras.
4. The Superintendent Special Prison, for Women, Vellore.
5. The Joint Secretary to the Government of Tamil Nadu, Public (Law and Order) Department, Fort St George, Chennai 9.

SSV(CO)
SR/27.9.2007

H.C.P.No.741 of 2007

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